HIEW VUN ZIN

v.

AU KAM WAH & ANOR AND ANOTHER APPLICATION

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
RAVINTHRAN PARAMAGURU J
[SUITS NO: BKI-17-58-7-2013 & BKI-17-59-7-2013]
19 JULY 2013

LEGAL PROFESSION: *Practice of law - Ad hoc admission of counsel - Application to admit two senior counsel from Peninsular Malaysia to appear in election petition in Sabah - Whether local applicant ought to be appointed - Whether s. 10(c) of Advocates Ordinance (Cap 2) (Sabah) envisaged one senior counsel and not two - Condition under s. 10(c) - Whether complied with*

ELECTION: *Petition - Failure to leave two copies of petition with court - Whether there was breach of r. 9 of the Election Petition Rules 1954 - Whether breach could be addressed in High Court*

WORDS AND PHRASES: *"Persons" - Advocates Ordinance (Cap 2) (Sabah), s. 10(c) - Meaning of - Whether singular or plural - Interpretation and General Clauses Enactment 1963*

Two applications were made pursuant to s. 10(c) of the Advocates Ordinance (Cap 2) (Sabah) ('Ordinance') to admit two senior counsel from Peninsular Malaysia to appear in two election petitions in the State. In the first originating summons, the applicant, Mr. Hiew Vun Zin ('Hiew') applied to admit Dato Bastian Pius Vendargon and Mr Lim Chee Wee to appear for him in the Elopura Election Petition. In the second originating summons, Wong Tien Fatt ('Wong') applied to admit the same Dato Bastion Pius Vendargon and Mr Lim Chee Wee to appear for him in the Sandakan Election Petition. The applicant in the first originating summons was the petitioner in the Elopura Petition and was the respondent in the Sandakan Petition. Both the applications were opposed by the State Attorney General's representative ('SAG'). The SAG submitted that Ms. Ratna Dewi Hamdam ('RDH') should have been named as the applicant since she was the local advocate who affirmed the affidavit in support of both applications. The SAG also argued that r. 9 of the Election Petition Rules 1954 ('Rules') had been breached in

respect of the Elopura Petition when the names of the two senior counsel were not submitted together with the petition. The Sabah Law Association's representative (SLA) had not opposed the applications on merits but had expressed concern over the fact that the applicants applied to admit two senior counsel for each of the election petition instead of one senior counsel. In interpreting the word "person" in s. 10(c) of the Ordinance, the applicants relied on the Interpretation and General Clauses Enactment 1963 (Sabah 34 of 1963) which provided that unless a contrary intention appeared, words in the singular included the plural. The applicants further submitted that election petitions had to be completed within six months and without any delay.

Held (allowing application in part with no order as to costs):

(1) Section 10(c) of the Ordinance does not require the application to be made by the local advocate. It provided for the application to be made by a senior counsel or by someone on his behalf. The only condition imposed by s. 10(c) was that the senior counsel must be instructed by a local advocate. Therefore, it was not fatal if the application was made by the party who sought the services of the senior counsel. (para 5)

(2) Under s. 10(c) of the Ordinance, the court's task is to determine whether the proposed senior counsel are qualified persons under s. 4(1) of the Ordinance and whether an *ad hoc* licence under s. 10(c) should be granted in the interest of justice for the counsel to appear in the Sabah law courts. Therefore any breach in the Rules should be addressed to the Election Court. Since the proposed senior counsel had not been granted an *ad hoc* licence as yet, it was difficult to hold that there was a breach of r. 9 of the Election Petition Rules 1954. (para 7)

(3) If "person" in s. 10(c) of the Ordinance can be read as "persons", the court is not minded to exercise its discretion to allow two senior counsel for each of the two election petitions. There is no contrary intention in s. 10(c) and there was also no submission made that the election petitions were complex which required the need of two counsel. The ground that the election petitions had to be completed within six

months and if one senior counsel could not make himself available the other could appear was not a ground on which the court could exercise its discretion to admit the two senior counsel under s. 10(c) of the Ordinance. (paras 9 & 10)

[Mr Lim Chee Wee was permitted to act and appear as counsel in the two originating summons].

Legislation referred to:
Advocates Ordinance (Cap 2) (Sabah), ss. 4(1), 10(c)
Election Petition Rules 1954, rr. 9, 34, 35

For the applicants - Chen Kok On (Bartholomew Chia with him); M/s M F Poon Hiew & Assocs
For the respondents - Dayangku Fazidah Hatun Bagul; SC, Sabah
For the Sabah Law Association - Brendon Soh

Reported by Sandra Gabriel

JUDGMENT

Ravinthran Paramaguru J:

[1] There are two applications before me under s. 10(c) of the Advocates Ordinance (Cap 2) (Sabah) ('Advocates Ordinance') to admit two senior counsel from Peninsular Malaysia to appear in two election petitions. Both applications are opposed by the State Attorney General's representative (SAG's representative). The Sabah Law Association's representative (SLA's representative) has not opposed the applications on the merits but has expressed reservation over the fact that the applicants are applying to admit two senior counsel for each of the election petitions instead of one senior counsel which is the norm. As both applications involve common issues of fact and law, I heard the said applications together. Therefore, I shall now issue only one judgment for both applications.

Brief Background Facts

[2] In Originating Summons BKI-17-58-7-2013, the applicant, Hiew Vun Zin is applying to admit Dato' Bastian Pius Vendargon and Mr Lim Chee Wee to appear for him in Election Petition

A No: SDK-26EP-1-6-2013 ('the elopura election petition'). The applicant is the petitioner in the said Elopura election petition. In Originating Summons BKI-17-59-7-2013, the applicant, Wong Tien Fatt is applying to admit Dato' Bastian Pius Vendargon and Mr Lim Chee Wee to appear for him in Election Petition No:
B SDK-26EP-2-6-2013 ('the Sandakan election petition'). The applicant is the respondent in the said Sandakan election petition.

Objections Of The Sabah Attorney General

C **[3]** The representative of the State Attorney General has raised two objections to both applications. The grounds of objection are as follows.

[4] The first objection is procedural in nature. Mr Hiew Vun Zin is the petitioner in the Elopura election petition. Mr Wong Tien
D Fatt is the respondent in the Sandakan election petition. The local advocate who affirmed the affidavit in support of both applications is Miss Ratni Dewi Hamdan of M F Poon Hiew & Associates. The SAG's representative submitted that the Miss Ratni Dewi Hamdan should have been named as the applicant. In my view
E there is no merit in this objection. Section 10(c) of the Advocates Ordinance (Cap 2) (Sabah) reads as follows:

> (c) the Chief Judge may in his absolute discretion **upon application by or on behalf of any person** who possesses any of the qualifications mentioned in subsection (1) of
F section 4 grant permission to such person to practise in any one case or matter subject to any conditions he may think fit and to the payment of the prescribed fee if:
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> (i) such person has been instructed by a local advocate; and
G
> [Am. Act A734:s.4]
>
> (ii) having regard to all the relevant circumstances he is of opinion that it is in the interest of justice so to do. (emphasis added)

H **[5]** I am mindful that it is the usual practice for the local advocate who is otherwise known as the instructing solicitor to make the application in question on behalf of senior counsel. However, s. 10(c) does not compulsorily require the application to
I be made by the local advocate. It provides for the application to be made by the senior counsel or by someone on his behalf. The only condition imposed by s. 10(c) is that the senior counsel must

be instructed by a local advocate. There is no dispute that in the instant case the two proposed senior counsel have been instructed by a local advocate. The affidavit in support affirmed by Miss Ratni Dewi Hamdan bears this out. Therefore, in my view, it is not fatal if the application is made by the party in the case or matter for which the services of the senior counsel is sought.

[6] The second objection of the SAG's representative is that r. 9 of the Election Petition Rules 1954 (made under the Election Offences Act 1954) had been breached in respect of Elopura election petition where the applicant is the petitioner. Rule 9 reads as follows:

> Appointment of advocate by petitioner
>
> 9. With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing, signed by him or them, giving the name of an advocate whom he or they authorize to act as his or their advocate or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address within Malaysia at which notices may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.

[7] In the Elopura election petition, the names of the two said senior counsel were not submitted together with the petition. In my opinion, there is no merit in this objection for the following reasons. My task under s. 10(c) of the Advocates Ordinance is to determine whether the proposed senior counsel are qualified persons under s. 4(1) and whether after having regard to all the circumstances, it is in the interest of justice to grant them an *ad hoc* licence under s. 10(c) to appear in the Sabah law courts. Therefore, any purported breach of the Election Petition Rules 1954 should be addressed to the election court. My second reason is that, the proposed senior counsel have not even been granted an *ad hoc* licence to appear in the Sabah courts as yet. Therefore, I find it difficult to hold that there was a breach of r. 9 of the Election Petition Rules 1954 on the ground that their names had not been left with the Registrar as counsel appearing in the petition. My third reason is that r. 34 of the Election Petition Rules 1954 envisages that an advocate can be appointed to act for a party after the petition is filed. It reads as follows:

A Notice of appointment of advocate

34. An advocate shall, immediately upon his appointment as such, leave written notice thereof at the office of the Registrar.

B **[8]** My fourth reason is that it is clear from r. 35 of the Election Petition Rules 1954 that the purpose of leaving the name of the advocate with the Registrar is for purpose of service. The rule reads as follows:

C Service of notices on advocates

35. Service of notices and proceedings upon such advocates shall be sufficient for all purposes under these Rules.

[9] In the instant case, the name of the local advocate is stated D in the Elopura election petition. Therefore, all parties would know of the address for service of notices. However, I hasten to add that the last two grounds I mentioned are strictly a matter for the election court to decide. I have addressed it here only because the SAG representative raised it.

E **[10]** The SLA representative raised only one objection which he framed as a "concern". Otherwise, he had no objection to the instant applications. He submitted that it is the norm that only one senior counsel is admitted per case. The applicants in the F instant applications had applied to admit two senior counsel for each of the two cases. The SLA representative also submitted that "person" in s. 10(c) of the Advocates Ordinance is in the singular. Counsel for applicant replied that under the Interpretation and General Clauses Enactment 1963 (Sabah 34 of 1963), unless a G contrary intention appears, "words in the singular include the plural and words in the plural shall include the singular". I do not see a "contrary intention" in s. 10(c). However, even if "person" in s. 10(c) could be read as "persons", I am not minded to exercise my discretion to allow two senior counsel for each of the H two election petitions. I take note that many local advocates are also appearing in election petitions. There is no submission made before me that the said election petitions are so complex that two senior counsel are required. The submission made before me by counsel for applicant is that election petitions have to be I completed within six months and therefore, if one senior counsel cannot make himself available, the other senior counsel could

appear and the case could proceed without any delay. With respect, this is not a ground on which I should exercise my discretion to admit senior counsel under s. 10(c). When I indicated my view during argument that only one senior counsel should be admitted, learned counsel for applicants made an election for Mr Lim Chee Wee to be admitted for both election petitions as senior counsel. I note that the SAG representative and SLA representative have accepted Mr Lim Chee Wee's qualification as senior counsel without demur. I have perused the affidavit in support in respect of the qualification of Mr Lim Chee Wee. He has appeared in two election petition cases and other cases where constitutional and administrative law issues were deliberated upon. I am also satisfied on the affidavit evidence that the applicants in the two cases were unable to obtain the services of experienced counsel to act for them. I also take note that election petitions are listed in the guidelines issued by the SLA for the purpose of obtaining senior counsel from Peninsular Malaysia. I am satisfied that Mr Lim Chee Wee has satisfied the conditions in 10(c) to be admitted as senior counsel in the said election petitions. In the exercise of my discretion under s. 10(c) of the Advocates Ordinance (Cap 2) (Sabah), I shall grant Mr Lim Chee Wee permission to act and appear as counsel in terms of prayer (1) of the instant two originating summons, ie, BKI-17-58-7-2013 and BKI-17-59-7-2013. No order as to costs.